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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,336	08/09/2001	Timur Mehmet Momol	UF-258CXC1	4420

23557 7590 11/05/2002

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EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 11/05/2002 10

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/925,336

Applicant(s)

MOMOL ET AL.

Examiner

Susan Coe

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-10 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-10, and 13-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The amendment filed August 19, 2002, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 3-5, 11, 12, 18, and 19 have been cancelled.
3. Claims 1, 2, 6-10, and 13-17 are pending.
4. In Paper No. 7, dated February 25, 2002, applicant's elected thyme oil (including thymol) for species A, and *Ralstonia* for species B without traverse.

### ***Claim Objections***

5. Claim 1 is objected to because of the following informalities: the claim does not end in a period. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 17 recites the limitation "said *Ralstonia solenacearum*." There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

5. Claims 1, 2, 6-10, and 13-17 are rejected under 35 U.S.C. 102(a) as being anticipated by Momol et al. (Phytopathology (June 2000), vol. 90, no. 6, pp. S127) for the reasons set forth on page 3 of the previous Office action.

Art Unit: 1654

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that this reference is not applicable under 102(a) because the author of the paper that is not also an inventor, P.A. Rayside, did not take part in the inventive process. However, to overcome a 102(a) rejection using this type of argument, applicant must submit a declaration (see MPEP section 715.01(c)).

6. Claims 1, 2, 6-10, and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Momol et al. (Phytopathology (June 1999), vol. 89, no. 6, pp. S54) for the reasons set forth on page 3 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that Momol does not teach applying the thymol or thyme extract on plants. However, the reference specifically states that the active ingredients were tested on tomatoes.

#### ***Claim Rejections - 35 USC § 103***

7. Claims 1 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Momol et al. (Phytopathology (June 1999), vol. 89, no. 6, pp. S54) on page 4 of the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues against this rejection for the same reasons as in the 102(b) rejection. Thus, this rejection is considered valid for the reasons discussed above in paragraph 6.

Art Unit: 1654

8. Claims 1, 2, 6-10 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Momol et al. (Phytopathology (June 1999), vol. 89, no. 6, pp. S54).

As stated above, Momol is considered to teach using thyme extract and thymol to control *R. solanacearum* on plants. Momol does not specifically teach applying the active ingredients to the situs of the plant. However, it was known in the art at the time of the invention that a pesticide can be applied to many different areas of the plant, including the situs, to suppress plant pathogens. Therefore, a person of ordinary skill in the art would have been motivated to apply the pesticides taught by Momol to many different areas of the plant, including the situs of the plant.

9. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 1654

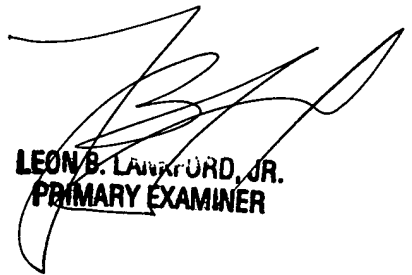
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
October 24, 2002



LEON B. LAWFORD, JR.  
PRIMARY EXAMINER